



Director's Liability; How to Minimize Exposure

The directors of a corporation bear the tax responsibility for the entire company. That means you, as a director, are wholly responsible for any tax debt your company may incur such as employee source deductions and those of the managing owner and the HST owed. If the company is unable to pay those balances, the CRA can attach director's liability and go after your assets by freezing your bank accounts, garnisheeing your wages, and even slapping a lien on your home. But a little forethought and planning will help to minimize your liability exposure.

When you set up your corporation, you need to choose your directors carefully! It's a prudent move to make sure your director has as few assets as possible, or that their major assets are held in the name of close family members. Optimism for your company's success is always highest at the beginning, and so you may not believe it necessary to consider failure, but it's best to plan for worst case scenarios and formulate an exit strategy that minimizes damage to your personal assets. Think; Robert DeNiro in Ronin: *"I never walk into a place I don't know how to walk out of."*

When it comes to director's liability, your prevention is better than the CRA's cure, so you need to make sure you make your business tax payments on time. Key the deadlines into your phone and download the CRA app from the App Store to keep track of deadlines. Doing both may seem redundant, but directors lead busy lives and so the more reminders, the better!

You will also need to make sure to minimize compliance errors by testing the tax filings. What controls are in place to help prevent common errors from occurring? You need to check that:

- ✓ You've collected the HST on total sales at 13%.
- ✓ You've only claimed 50% of the HST paid on meals and entertainment.
- ✓ The HST exempt expenses (like insurance and interest) do not record HST.
- ✓ You've claimed only the HST for your subcontractors who are HST registrants.
- ✓ All expense receipts are in the name of the business. If not, complete an expense report and attach the receipts and reimburse the owner instead of paying for the expense from the business bank account. It is also a good idea to make sure that the HST number on the expense receipts is documented and valid.

For employee source deductions, make sure that you have:

- ✓ Deducted CPP and EI at the prescribed rates.
- ✓ Deducted sufficient income tax.
- ✓ Filed the T4's and T4 summaries on time.

The CRA takes employee source deduction arrears very seriously. The penalties can be 20% of the monthly source balance owing, so it is critical that you make those payments first.

Also, make sure you've properly classified all of your workers as employees or self-employed subcontractors. If the CRA orders a written ruling during a payroll trust exam or as a result of a complaint by a worker, they may order you to pay the EI and CPP for both the employee and the employer portions with penalties and interest. (See my article, "Employed vs. Self-Employed").

Regardless of your good intentions or even your best efforts as a director to prevent tax debt from amassing, if it happens, it is imperative that you take steps BEFORE the CRA steps in and takes action. The only way to stop the CRA's aggressive collection tactics is with a consumer proposal or bankruptcy, so it's best to consult a Trustee as soon as

possible so that you can formulate an appropriate plan. If you can get in front of the situation, then you will have more control over the outcome and can minimize the negative impact on your personal finances.

In many ways, being the director of a business is like being the conductor on a train. You are putting into motion a machine that can carry you and a lot of other people a great distance, but one that can run at dangerous speeds, careen out of control, and create widespread carnage if not kept in check. You can't afford to assume that critical systems are working; you need to be certain! If you do have a runaway, the CRA will set up concrete barriers on the track to stop you cold. And that's not a good day for anyone. In the end, conductor or director, you are responsible. Make sure you have adequate protection, a failsafe system, and an exit strategy that will help minimize the damage to you. Then breathe easy and enjoy the ride. All aboard!